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EXAMINER

PARSLEY, DAVID J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 3643 | |

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/664,250

Applicant(s)

O'LEARY ET AL.

Examiner

David J Parsley

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18-21 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18-21 and 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-692)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 2-3-05 and this action is final.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 25 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation of the step system being foldable flat for storage is not disclosed in applicant's specification and drawings. As seen in applicant's figure 8 the device is in the folded position with the legs not being flush with each other and flat and the steps are at an angle to the legs and thus not flat.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9, 14 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 5,762,163 to Kain.

Referring to claims 1 and 24, Kain discloses a folding step system comprising, a frame – at 10, including a U-shaped angled forward member – at 24a-24c, forming two spaced legs – at 24a,24b, and a connecting base member – at 24c, a U-shaped vertically disposed (when folded see figures 9-10) rearward member – at 22a-22c, hinged to the forward member and including two spaced legs – at 22a,22b, connected by a base member – at 22c, a connecting rod – at 46,48, spanning the two spaced legs of the rearward member – see for example figures 3-6, a plurality of wide, deeply offset steps – at 14,16,18, with a low rise each hingedly connected to the angled forward member – see for example figures 1-2, and a pair of bracket members – at 57, each hingedly connected to the steps – see figures 1-10, and each including an elongated guide channel therein – see proximate 48 in figures 5-6, through which the connecting rod extends to allow the steps and the rearward frame member to fold proximate the forward frame member – see for example figures 1-10, each elongated channel including a detent – at 76, 78, 74a, 74b, which releasably locks the connecting rod with respect to the bracket members when the steps and the rearward frame member are unfolded – see for example figures 3-6.

Referring to claim 9, Kain discloses there are bushings – at 76 or 78 or the outer portion of the step proximate 48, proximate 30a or 30b and proximate 38 – see for example figures 1-10, between each step and the bracket members.

Referring to claim 14, Kain discloses the U-shaped vertically disposed rearward member is round in cross section – see for example column 2 lines 39-42.

Claims 16, 18-21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,593,821 to Lister.

Referring to claim 16, Lister discloses a step system comprising, an angled forward frame portion – at 32,34, a rearward frame portion – at 18,40-46,40'-46', hinged to the forward frame portion – see proximate 88 in figures 1-2, and a plurality of steps – at 36,38, hingedly connected to the angled forward frame portion – see for example figures 1-2, each step wider than 12 inches, deeper than 6 inches, having a rise less than 9 inches and having an offset between adjacent steps greater than 7 inches – see for example column 1 lines 70-75, column 2 lines 1-18 and column 4 lines 26-46. Lister further discloses the angled forward frame portion includes two spaced legs – at 26 or at 44' connected by a base member – at 14 or 56 – see figure 1.

Referring to claim 18, Lister discloses the rearward frame portion includes two spaced apart legs – at 60,60' – see figure 1.

Referring to claim 19, Lister discloses a connecting rod – at 50 or 50' or 56, spanning the two spaced apart legs of the rearward frame portion – see for example figures 1-3.

Referring to claim 20, Lister discloses a pair of bracket members – at 52,52', hingedly connected to the steps – see proximate 32,34 in figures 1-3, and each including an elongated guide channel – see figure 3, through which the connecting rod – at 56, extends to allow the steps

and the rearward frame portion to fold proximate the forward frame portion – see for example figures 1-3.

Referring to claim 21, Lister discloses a frame – at 10, including an angled forward frame portion – at 32,34, a rearward frame portion – at 18,40-46,40'-46', including spaced legs – at 60,60', hinged to the forward frame portion – see figures 1-3, a connecting rod – at 56, spanning the two spaced legs of the rearward frame portion, a plurality of steps – at 38, each hingedly connected to the angled forward portion – see proximate 32,34, in figures 1-3, each step wider than 12 inches and deeper than 6 inches, each step having a rise less than 9 inches and an offset greater than 7 inches – see for example column 1 lines 70-75, column 2 lines 1-18 and column 4 lines 26-46, a pair of bracket members – at 52,52', each hingedly connected to the steps – see proximate 32,34, in figures 1-3, and each including an elongated guide channel – see figure 3, through which the connecting rod – at 56, extends to allow the steps and the rearward frame portion to fold proximate the forward frame portion – see for example figures 1-3. Lister further discloses the angled forward frame portion includes two spaced legs – at 26 and a connecting base member – at 14,36 – see for example figure 1.

Referring to claim 23, Lister discloses the rearward frame portion includes a base member – at 50,50, connecting the two spaced legs – see for example figures 1-3.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kain as applied to claim 1 above, and further in view of U.S. Patent No. 3,593,821 to Lister.

Referring to claims 2-8, Kain further discloses three steps – at 14,16,18. Kain does not disclose the steps are wider than 12-16 inches, deeper than 6-10 inches, having a rise less than 9 inches and having an offset greater than 7 inches. Lister does disclose the steps – at 36,38, are wider than 12 inches, deeper than 6 inches, having a rise less than 9 inches and having an offset greater than 7 inches – see for example column 1 lines 70-75, column 2 lines 1-18 and column 4 lines 26-46. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kain and add the steps with the dimensions of Lister, so as to allow for the step system to be adjustable for differing heights.

Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kain as applied to claim 1 above, and further in view of U.S. Patent No. 4,440,264 to Knoke et al.

Referring to claim 10, Kain does not disclose rubber feet on the bottom of the forward member and the rearward member. Knoke et al. does disclose rubber feet – at 20, on the bottom of the forward member and the rearward member – see for example column 3 lines 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kain and add the rubber feet of Knoke et al., so as to allow for the surface on which the device is used to be protected from damage during use of the device.

Referring to claim 15, Kain does not disclose the hinged connection between the vertically disposed rearward frame member and the angled forward frame member comprises a

distal tang extending from each leg of the vertically disposed rearward frame member each received in a slot formed in each leg of the angled forward frame member. Knoke et al. does disclose the hinged connection between the vertically disposed rearward frame member – at 38,40, and the angled forward frame member – at 14-19, comprises a distal tang – at 62,64, extending from each leg of the vertically disposed rearward frame member each received in a slot formed in each leg of the angled forward frame member – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kain and add the hinged connection of Knoke et al., so as to allow for the forward and rearward members to be movably and securely connected to one another.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kain as applied to claim 1 above, and further in view of U.S. Patent No. 5,577,574 to Joseph. Kain does not disclose each step includes a grooved rubber covering. Joseph does disclose each step includes a grooved rubber covering – see for example column 5 lines 53-67. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kain and add the steps with rubber cover of Joseph, so as to provide greater traction to the steps during use.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kain as applied to claim 1 above. Kain does not disclose the steps are constructed of chrome-plated steel. However, it would have been obvious to one of ordinary skill in the art to take the device of Kain and add the steps made of chrome plated steel, so as to allow for the device to be aesthetically pleasing. Alternatively, an aesthetic design change does not render a claim patentable over the prior art as seen in, *In re Seid*, 161 F.2d 229, 73, USPQ 431 (CCPA 1947) and MPEP section 2144.04.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kain as applied to claim 1 above, and further in view of U.S. Patent No. 4,485,892 to Maloney et al. Kain does not disclose the angled forward frame is square in cross section. Maloney et al. does disclose the angled forward frame – at 12-16, is square in cross section – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kain and add the frame with square cross section of Maloney et al., so as to allow for the device to be strong and durable for repeated use.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lister in view of Kain. Lister discloses a step system comprising, an angled forward frame portion – at 32,34, a rearward frame portion – at 18,40-46,40'-46', hinged to the forward frame portion – see proximate 88 in figures 1-2, and a plurality of steps – at 36,38, hingedly connected to the angled forward frame portion – see for example figures 1-2, each step wider than 12 inches, deeper than 6 inches, having a rise less than 9 inches and having an offset between adjacent steps greater than 7 inches – see for example column 1 lines 70-75, column 2 lines 1-18 and column 4 lines 26-46. Lister does not disclose the step system is foldable flat for storage and transport. Kain does disclose the step system – at 10, is foldable flat for storage and transport – see for example figure 10. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Lister and add the step system being foldable flat of Kain, so as to allow for the device to be easier to move around.

Response to Arguments

5. Regarding claims 1-15 and 24, the Kain reference US 5762163 does disclose the bracket members – at 57 as seen in figures 5-6, have a channel therein – proximate 76 as seen in item 57 in figure 6. Further the Kain reference discloses the bracket members – at 57 are in step 18 and are hingedly connected to the other steps – at 14 and 16 via the hinged connection – at 30 and 32 as seen in figures 1-2. Further the Kain reference discloses the channel in item – 57 as seen in figures 5-6, includes a detent – at 76 as seen in figure 6 and – at 74,74b as seen in figure 5. Further the Kain reference discloses the bracket members – at 57, are hingedly connected to opposite sides of the steps – at 14 and 16 as seen at items 30-36 in figures 1-2, where the hinged connections at items 30-36, are shown on each opposing side of the steps.

Regarding claims 16, 18-21 and 23, the Lister reference US 3593821 does disclose a base member – at 36 connected to the legs – at 26. Applicant has not supplied a specific definition of the term “base” and it is deemed that the lower step portion – at 14,36, is a base member in that it is a base for the pad – at 22 and for the linkage – at 32,34, which connects the legs – at 26.

Applicant's arguments with respect to claim 25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

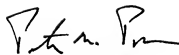
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 3643

DP

David Parsley
Patent Examiner
Art Unit 3643



PETER M. POON
SUPERVISORY PATENT EXAMINER

4/12/05